No. 85-607 (4)

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

MAURA BURCHE, Appellant
vs.
CATERPILLAR TRACTOR Co., Appellee

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT
-JURISDICTIONAL STATEMENT-

BRIEF OPPOSING RESPONDENT'S BRIEF "IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI" AND TO RESPONDENT'S "MOTION TO STRIKE PURPOTED REVISION OF PETITION"

MAURA BURCHE
Appellant Pro Se
5210 Division St.
Davenport, IA. 52806
(319) 386-4736

BEST AVAILABLE COPY

26 pp

QUESTIONS PRESENTED FOR REVIEW

1. Whether the rights of Appellant Maura Burche, under Fourteen Amendment-Sect.1 United States Constitution, Article III, Sect.2 of United States Constitution and Title VII, were violated by previous courts by denying Appellant's claim and relief, and accepting her employment discrimination, through a concurent process of: judicial errors, lack of legal assistance, admittance of misrepresentations by Appellee, lack of due process of law and equity.

2. Whether the Appellant's constitutional rights were violated by Appellee through Appellant's discrimination because of sex and national origine, during her work and also after returning from medical leave through: Appellee's refusal to reinstate her in an equivalent job to previous job, her discharge from her employment and the distribution by Appellee of false, de-

famatory reports regarding Appellant's work, to other potential employers, preventing Appellant of finding any other job.

3.Whether the Appellant's constitutional rights guaranteed by the First Amendment of United States Constitution and above mentioned sections of Constitution, were violated by the Court of Appeal for the Seventh Circuit, by limiting her case to a "failure to prosecute" and disregarding damaging insults addressed to her during working by some co-workers.

TABLE OF CONTENTS

QUESTIONS PRESENTED FOR REVIEW..... 1

TABLE OF CONTENTS..... 3

TABLE OF AUTHORITIES..... 3

OPINIONS BELOW..... 6

JURISDICTION..... 7

STATEMENT OF THE CASE.....11

ARGUMENT.....12

CONCLUSION.....18

APPENDIX I (Appeal From The United States Court Of Appeal For The Seventh Circuit).....I

APPENDIX II (Clerk Office Letter Of Sept. 23,1985.....II

APPENDIX III (Clerk Office Letter Of Oct.12, 1985.....III

TABLES OF AUTHORITIES

I. Cases

Carnley v. Cochran, Fla.1962,82 S.Ct. 884

Pag.

369,U.S. 506, 8L.Ed.2d.70..... 10

City of El Passo v. Simmons, Tex. 1965, 1965,85, S.Ct. 577,379,U.S.497,13 L.Ed. 446,rehearing denied 85 S.Ct. 879,380, U.S. 926, 13 L.Ed.2d.813.....15

James Dikinson Farm Mortgage Co. v. Harry, Il. 1926,47 S.Ct. 308,273,U.S 119,71 L.Ed.569,..... 9

Mitchell v. Robert De Mario Jewlery Inc. CA. 1960, 80 S.Ct. 332,361,U.S. 288,4 L.Ed.323,.....11

Moreno v. Collins, CA.I 11,1966,362, F.2d.176.....16

Union Pac.R.Co. v. Price, Nev. 1959, 79 S.Ct.1357,360 U.S.601, 3L.Ed.2d. 1460.....10

U.S. v. Rumely App.D.C.1953,73 S.Ct. 543,345, U.S. 41,97 L.Ed.770..... 9

Watts v. Union Austriaca etc. N.Y. 1918,39 S.Ct.1,248,U.S.9,63,L.Ed.100, 3 ALR 323.....18

II. Statutes Pag.

Title VII Civil Rights Act 1964..... 8

U.S.C.A. 22, 2702(b).....10

U.S.C.A. 28, F.R.C.P. Rule 8(a)..... 9

U.S.C.A. 28,1254..... 9

U.S.C.A 28, United States Supreme Court Rules, Rule 33(7).....13

III. Constitution

United States Constitution,Article III, Section 2..... 7

United States Constitution, First Amendment..... 7

United States Constitution, Fourteenth Amendment..... 7

No.

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

MAURA BURCHE, Appellant

v.

CATERPILLAR TRACTOR CO., Appellee

BRIEF OPPOSING RESPONDENT'S BRIEF "IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI" AND TO RESPONDENT'S "MOTION TO STRIKE PURPOTED REVISION OF PETITION".

MAURA BURCHE ("Burche") submits this brief opposing Brief of Respondent in Opposition to Petition for Writ of Certiorari and Motion to Strike Purpoted Revision of Petition filed by Thomas Harvel attorney for ("Caterpillar"), Appellee herein.

OPINIONS BELOW

U.S. Supreme Court Order of July 25, 1985 (Appx.A -Appeal Supreme Court).

U.S. Court of Appeal for Seventh Circuit, Order denying Appellant's Motion to Reinstate the Appeal (Appx.C - Appeal Supreme Court). Opinion of U.S. Court of Appeal at second consideration (Appx.E). U.S.District Court Memorandum upon second consideration (Appx. G-Appeal Supreme Court).

Order of U.S. Court of Appeal upon first consideration of the case (Appx. I - Appeal Supreme Court).

U.S.District Court dismissal of Appellant's claim upon first consideration of case. The opinions are not reported in West Publishing Co.'s System.

JURISDICTION

The jurisdiction of U.S. Supreme Court in this case is invoked under U.S. Constitution-Article III, Sect.2; Fourteen Amendment-Sect.1 and First Amendment.

> "The judicial power of federal courts includes all cases of law, criminal cases,civil cases and cases of equity(cases concerning asking for court action to prevent some wrong or end some wrong being done".
>
> "No state may deny any person under its government equal protection of law".
>
> "Citizens may protect themselves against damaging insults spoken or written about them, by civil lawsuits"

Appellant's case is before this court for: review of all unjust, contradictory deci-

sions of previous courts, which concured in denying Appellant constitutional equal protection of law and equity, disregarding all facts presented by Appellant, tolerating Appellant's discrimination and Appellee's false motivations;

review of Appellant's case of discrimination under Title VII of Civil Rights Act 1964, from the time she was hired by Appellee till her dismissal, establish justice and relief in this case of equity, where Appellant's constitutional rights were infringed, with severe consequences on Appellant's health, and financial losses.

review of the case because of the unconstitutional deprivation of Appellant of legal assistance and due process of law.

> "Grave constitutional questions are matter properly to be decided by Supreme Court, but only when they inescapably come before that court for adjudication; and until such time it is duty of that court to abstain from marking boundaries of congressional power or delimiting protection

> granted by Constitution". U.S. v. Rumely App.D.C.1953,73 S.Ct. 543, 345, U.S.41,97 L.Ed.770.

For the above wrong doing Appellant has no remedy, without the judgement of this court. U.S.C.A. 28-F.R.C.P. Rule 8(a) states:

> "In equity practice, the part of the bill which is intended to give jurisdiction of the suit to the court by a general averment that the acts complained of, are contrary to equity and tend to the injury of the complainant,and that he has no remedy, or not a complete remedy without the assistance of a court of equity, is called the jurisdictional statement".

Appellant's case is properly under the jurisdiction of this court on constitutional grounds and is supported by determination:

> "Where case is properly before Supreme Court on constitutional grounds the jurisdiction of that court extends to review of all questions". James Dickinson Farm Mortgage Co. v. Harry,Il.1926,47 S.Ct.308,273 U.S.119,71 L.Ed.569.

The Appellant's discrimination case,the refusal by Appellee to reinstate her in an equivalent job to her former job, the

wrongful dismissal of Appellant, are pro-perly in jurisdiction of this court:

> "The United States Supreme Court granted certiorari to decide important question whether former employee of railroad could pursue a common law remedy against railroad for damages for his allegedly wrongful dismissal after having chosen to pursue under Railway Labor Act.." Union Pac. R. Co. v. Price, Nev.1959,79 S.Ct.1351, 360 U.S,601,3 L Ed.2d.1460.

U.S. Supreme Court jurisdiction is invoked through 22 U.S.C.A.-2702(b) -Malpractice protection; Defense of civil actions by United States:

> "The U.S. Government shall defend any civil action or proceeding brought in any court against any person reffered to in subsection (a) of this section (or his or her estate) for any such damage or injury".

and also through the decision:

> "Claim of lack of assistance of trial counsel presented important constitutional question waranting the granting of certiorari". Carnley v. Cochran, Fla. 1962,82 S.Ct. 884,369, U.S.506, 8 L.Ed.2d.70.

This court has also jurisdiction when-

ever there is a contradiction between decisions of different courts:

> "Certiorari was granted to review decision of Court of Appels which was in conflict with decision of Court of Appeal for an - other circuit". Mitchell v. Robert De Mario Jewlery Inc., CA.1960,80 S.Ct.332,361,U.S.288, 4 L.Ed.2d323.

The decision of U.S. District Court dismissing Appellant's case is in flagrant contradiction with the decision of U.S Court of Appeal for the Seventh Circuit (Appx.1-24, Appeal to Supreme Court):

> "The District Court erred in dismissing Plaintiff's complaint. We hold that Plaintiff sufficiently pleaded a claim under Title VII". (Appx.I-24, Appeal to Supreme Court)

Therefore Appellant asserts that her Appeal to Supreme Court has sufficient jurisdiction requisites upon which to invoke the Supreme Court power of review and relief to compensate Appellant of damages and injuries suffered.

STATEMENT OF THE CASE

The case has been presented in the

"Appeal from the United States Court of Appeal for the Seventh Circuit" (pg.16-48).

ARGUMENT

In opposition to Appellee's "Motion to Strike", Appellant asserts as follows:

1. Appellant filed on July 9, 1985 "Application for Extention to File a Notice of Appeal and to Docket Appeal"(Appx.I), and filed a Notice of Appeal on July 17, 1985: "Appeal from U.S Court of Appeal for the Seventh Circuit"(Appx.II).

2. U.S. Supreme Court approved Appellant "to file a petition for writ of certiorari and/or for docketing an appeal" till Sep. 22, 1985.

3. Appellant timely docketed on Sept.17, 1985 in Supreme Court her "Appeal from U.S. Court of Appeals for the Seventh Circuit, Chicago,Il."

4. Office of the Clerk-Supreme Court filed the docket of Appeal but returned it

to Appellant, requesting through letter of Sept.23, 1985 (Appx. II) that "Questions Presented" in Appeal, should be the first item and the margin around each page should be at least 3/4 in.

5. In accordance with 28 U.S.C.A-Supreme Court Rules, Rule 33(7):

> "The clerk shall not accept for filing any document presented in a form not in compliance with this Rule,but shall return it indicating to the defaulting party wherein he has failed to comply: the filing however shall not thereby be deemed untimely provided that new and proper copies are promptly substituted".

Appellant acting conform clerk office of Supreme Court request, and above rule, without changing the meaning of the con - tent of her docket of Appeal presented for the first time,promptly mailed it to the clerk office, together with a dated proof of service; Therefore the Appeal was timely filed, in proper form and content and does not present any injustice or hardship for Appellee.

For the above reasons, Appellant moves the court to deny Appellee's "Motion to Strike" the Appeal.

6. Opposing to "Brief of Respondent in Oposition to Petition for Writ of Certiorari" and also to Clerk Office's letter(App. III)Oct.12, 1985, to file the document designated and entitled "Appeal from United States Court of Appeal for the Seventh Circuit" as a writ of certiorari instead an Appeal, Appellant reafirms above paragraphs 1 to 3 and 5 and asserts:

The Appeal corrected conform Clerk's Office request, is legal, in proper form and content, conform Rule 15 of F.R.C.P., terefore should be considered such as Appeal and not a writ of certiorari:

> "Provision that appeals to Supreme Court from Court of Appeals shall preclude review by writ of certiorari means only that if appeal is proper and has been taken, certiorari will not thereafter be available, but where appeal is not proper, Supreme Court will still consider

> timely application for certiorari".City of El Passo v. Simmons, Texas,1965, 85 S.Ct. 577,379,U.S.497,13 L.Ed.2d.446, rehearing denied 85 S.Ct. 879, 380 U.S. 926,13 L.Ed.2d.813.

Considering malpractice commited by her hired legal counsel Paul Kuster, resulting in dismissal of her case, Appellant was forced and better served to represent Pro Se, despite the dificulties encountered by not having a law degree.

The lack of legal assistance, malpractice and unproper handling of her case, by judges and her attorneys, showed up from the beginning of this suit and continued during all trials in previous courts.

F.E.P.C. administrative judge Linda Mac Lachlan in her order of dismissal of Appellant's claim (Appx.J18-Appeal Supreme Court) did state that complainant's attorney needed additional time to prepare the case, but made Appellant responsible of lack of proper legal assistance.

No time limitation was ever demanded by Appellant in detriment of discovery and justice, which should have been main considerations for her attorney and judge . As far as Appellant knows neither FEPC's judge or Appellant's attorney made any effort to demand the important discoveries of Appellant discrimination, as tapes, reports,declarations obtained during FEPC investigation,which
by Appellant, to help bring justice to this case.

> "It was a high penallity for innocent plaintiff to have her suit dismissed because of her counsel negligence, in which judge had not been advised as to all of pertinent facts, vacated orders dismising case and refusing to reinstate same and remanded with direction that cause of action be reinstated on calendar". Moreno v. Collins,CA. I 11,1966,362 F.2d.17

Appelant can't be bound to her attorney acts as long as his unprofessional illegal practice determine dismissal of a case

where important constitutional rights are infringed.

What Appellee is considering in Appeal as "masses of irrelevant and unnecessary material in contradiction of direct and concise requirement of the Supreme Court Rules" are uncontested facts of a cruel, illegal harassment and discrimination of Appellant, continuously covered up by Appellee's false motivations, indirectly helped by the malpractice of Appellant's attorney and by judicial errors and unjustice commited by judges.

The Appellee refused to present to the court the list of all technicians hired between Aug. 1978 to May 1979 in spite of FEPC's and Appellant's demands. Such compliance by Appellee would have brought more facts to comply with Appellee's request for "relevant,direct and concise material" and would have helped to give justice to this case. This would have been possible

only if Appellee was supoenaed, but the court refused to do so.

CONCLUSION

The Appeal is before United States Supreme Court on constitutional grounds for review, justice and relief, of all unjust decisions of previous courts, unlawful discrimination of Appellant with severe consequences for Appellant's health, life and important material damages to the present and the future.

> "This court has power not only to correct error in judgement entered below, but to make such dispositions of the case as justice may at this time require". Watts v. Union Austriaca etc.N.Y 1918, 39 S.Ct.1,248, U.S.9,63,L. Ed.100,3ALR 323.

Appellant prays the Court, conform her constitutional rights, for a speedy trial, after her case was in courts for more than five years, and also for relief to compensate justly and fully Appellant of her emotional, pshychological injuries and mate-

rial damages.

For the above alleged reasons, Appellant prays the Court to deny Appellee's "Motion to Strike Purpoted Revision of Petition" and dismiss Appellee's request to deny Appeal, formulated in "Brieff of Respondent in Opposition to Petition for Writ of Certiorari" and accept Appellant's Appeal docketed in the Supreme Court.

Maura Burche
Appellant Pro Se

5210 Division St.
Davenport, IA. 52806
(319) 386-4736

Oct.24,1985

PROOF OF SERVICE

I, Maura Burche, Appellant Pro Se, hereby certifys that three copies of the foregoing "BRIEF OPPOSING RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI AND TO RESPONDENT'S MOTION TO STRIKE PURPOTED REVISION OF PETITION" were duly served this day of Oct.24,1985 by insured mail, United States Mail,postage prepaid, upon Appellee's attorney: Thomas G.Harvel at the address: 1400 First National Bldg.,Peoria, Il. 61602.

Maura Burche
Appellant Pro Se

5210 Division St,
Davenport, IA.52806
(319) 386-4736

APPENDIX I - 1

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

No._____

Maura Burche ..... Appellant

v.

Caterpillar Tractor Co...Appellee

Jul. 17,1985
Case No. 84-1807

APPEAL FROM THE UNITED STATES COURT OF APPEAL FOR THE SEVENTH CIRCUIT, CHICAGO,IL.

Before:

Hon. Walter J. Cummins, chief Judge

Hon. William J. Bauer, Circuit Judge

Hon. Harlington Wood Jr. Circuit Judge

Comes now Plaintiff-Appellant Maura Burche represented pro-se, and hereby files her Appeal as follows:

1.This Appeal is taken from the latest ruling of Honorable Harlington Wood Jr. on Motion to Reinstate the Appeal, denied on

May 22,1985, maintaining previous ruling dated on November 27, 1984 in favor of Defendant.

2.The Clerk is hereby requested to prepare the Record on Appeal as required.

Maura Burche

Plaintiff Pro Se

Proof of Service

The undersigned Maura Burche certifies that a copy of the above document was served to Defendant's attorney Thomas Harvel at the address 1400 First National Building Peoria.Il.by depositing the document in mail box in Davenport,Ia. on July 17,1985.

APPENDIX II

OFFICE OF THE CLERK
SUPREME COURT OF THE COURT OF THE UNITED STATES, WAHINGTON, D.C. 20543

September 23, 1985

Ms. Maura Burche

5210 Division St.

Davenport, IA. 52806

Re: Maura Burche v. Caterpillar Tractor Company

Dear Ms. Burche

I am returning your appeal for the reason that the Court's requirements concerning the question presented being the very first item as well as the Rule concerning a margin of at least 3/4 of an inch around each page, have not been complied with.

Very truly yours

Joseph F. Spaniol, Jr.Clerk

By

Edward C. Schade

Assistant Clerk

cdd
Enc.

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D.C. 20543

Oct. 12, 1985

Ms.Maura Burche
5210 Division St.
Davenport, IA.52806

Re: Maura Burche v. Caterpillar
Tractor Co.
No.85-607

Dear Mr. Burche:

The petition for a writ of certiorari in the above-entitled case was docketed in this Court on September 17,1985 as No. 85-607.

Your papers have been filed as a petition for writ of certiorari. Since no notice of appeal was filed, they cannot be docketed as an appeal.

Forms are enclosed for notifying opposing counsel that the case was docketed.

Very truly yours

Joseph F. Spaniol, Jr. Clerk

By

Ruth J. Butler

Assistant Clerk

Enclosures